APPENDIX A

DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

No. 1D99-1961

GLOVEGOLD SHIPPING LIMITED,
Appellant,

v.

SVERIGES, ANGFARTYGS ASSURANCE FORENINF
d/b/a The Swedish Club,
Appellee.

Dec. 29, 2000.
Rehearing Denied Aug. 14, 2001.

KAHN, J.

This case raises the question of whether a Florida court has jurisdiction over a foreign insurance company that denied coverage to one of its insureds, a foreign shipping company, when the insured vessel was extensively damaged while sailing in Florida waters. In particular, in this case, on February 5, 1996, a ship owned by appellant Glovegold Shipping, Limited (Glovegold) suffered catastrophic engine and other consequential damages off the Florida coast near Jacksonville. We conclude that the requirements of Florida's long-arm statute and the constitutional due process requirements for specific jurisdiction over appellee in Florida are met. We also conclude that the policy of marine insurance here at issue does not contain a valid forum selection

provision. Accordingly, we reverse the order dismissing appellant's complaint for lack of jurisdiction and venue, and we remand this case for further proceedings.

I. FACTS

A. THE PARTIES

Appellee, the Swedish Club (TSC), an insurer headquartered in Sweden, provides insurance for vessels throughout the world. TSC offers ship owners and operators three types of insurance to protect their interests in, and against potential liabilities on account of, their vessels: 1) protection and indemnity, such as against the risk of liability for a wide range of defined occurrences other than collision; 2) hull and machinery, such as first-party property damage and collision liability; 3) freight, defense and demurrage. TSC also promises to deliver those shipowners who insure with it a high level of insurance services, including response at the scene of any casualty, with TSC surveyors on hand to assist in the assessment of damage, and the preparation of specifications for repairs. TSC's internet site states that "[t]he Swedish Club's wealth of insurance, technical, and legal support is available on a round-the-clock basis, from the moment a member is involved in a casualty. Experienced specialists are dispatched to the scene."

As part of this worldwide insurance business, TSC has, as stated in its marketing materials on the internet site, established and maintained a worldwide "network of agents," including a system of correspondents throughout the United States, designed to respond in the event of a casualty anywhere in the world. This network includes technical, salvage, and legal correspondents in the three major Florida ports: Jacksonville, Tampa, and Miami. In the Miami area is the Coral Gables office of Scandinavian Marine Claims Office, Inc. (SMCO), which investigated the casualty in this case.

Appellant Glovegold, a Maltese company with offices in Pireaus, Greece, owned the ANTHENOR EXPRESS, a Maltese-flag cargo vessel. Denholm Shipmanagement LTD, a Scottish company, managed the vessel. According to evidence submitted by Glovegold, the vessel plied a regular and continuous trade in and out of Florida ports, including Jacksonville, Miami, Port Everglades, and Tampa. Her historic trading pattern can be summarized as follows:

Aug. 89-Dec. 90: Miami—Cayman Islands

Jan. 91-Feb. 92: Tampa—Guatemala

Feb. 92-Jan. 94: Miami—Bahamas

Jan. 94-Feb. 96: Jacksonville or Port Everglades—Bahamas

During this time, various shipping organizations operating out of offices in Florida engaged the ANTHENOR EXPRESS on time-charters. During 1991 and 1992, the vessel was chartered to Tampa Bay Shipping of Florida. From 1993 through 1996, the vessel was chartered to Bahmar Agencies and Sea Express, both managed from Miami. Danoff Inc., a Miami-based ship brokerage firm, brokered these charters.

Throughout this time, the vessel was regularly maintained, supplied and crewed in Florida, with repairs and periodic drydockings carried out at commercial facilities located either in Jacksonville, Miami, or Port Everglades. The offices of Bureau Veritas at Miami and Port Everglades carried out all classification surveys. Florida-based ship chandlers always provisioned the vessel in Florida ports (Miami, Jacksonville, Port Everglades). New and relieving crew members always boarded the vessel in Florida ports, and their contracts of employment were always signed upon their reporting on board.

Prior to the February 1996 casualty, the only litigation involving the ANTHENOR EXPRESS during this eight-year

period was an action brought in the United States District Court, Tampa, Florida, in or about 1992, involving Tampa Bay Shipping of Florida and Apollo Stevedore Shipping, Inc. The Tampa office of Holland & Knight represented Glovegold in this earlier matter.

B. THE INSURANCE POLICY

On July 31, 1995, TSC issued Glovegold a policy of hull and machinery (H & M) insurance for the period from July 31, 1995, to December 31, 1995. Lars Rhodin, the Director of the Hull Claims Department for TSC, stated by affidavit, "[t]here was no connection with the State of Florida or the United States of America in the placing or issuing of the insurance." The affidavit of George Zachariou, master of the ANTHENOR EXPRESS until July 31, 1995, however, affirmed that the vessel was berthed at Port Everglades, Florida on July 31, 1995, when the policy was issued. According to Glovegold, TSC, by addendum executed December 31, 1995, extended the coverage to December 31, 1996. Glovegold also submitted the affidavit of Konstantinos S. Kostopoulos, Glovegold's managing director. Kostopoulos explained the hand-written notes of Mr. Pokidis, a major Glovegold shareholder. These notes, a copy of which was attached to the Kostopoulos affidavits, reflected the deck log entries of the ANTHENOR EXPRESS, and they showed that the ANTHENOR EXPRESS was berthed in the Port of Miami on December 31, 1995, when the addendum was executed.

C. THE CLAIM

As mentioned at the outset, on February 5, 1996, while sailing in Florida waters en route to Jacksonville, the ANTHENOR EXPRESS, then about six miles south of the Jacksonville sea buoy, experienced catastrophic damage to the crankshaft of her main engine and extensive consequential damage. The failure left the vessel unable to proceed on her

own power, necessitating her being towed by a Florida-based tug to North Florida Shipyards in Jacksonville. Glovegold alleges that its resulting loss was attributable to a peril insured by TSC's H & M insurance policy.

Glovegold notified TSC who directed SMCO to investigate. Based on the results of the SMCO investigation, TSC refused to cover the damage sustained by the ANTHENOR EXPRESS. The vessel remained in Jacksonville disabled and unable to sail. In October 1996, the Jacksonville shipyard and the towing company, along with various other creditors, caused the vessel to be arrested pursuant to an in rem proceeding in federal district court. *See North Fla. Shipyards v. Glovegold Shipping*, 96-105-Civ-J-10 (M.D.Fla.1997). On September 23, 1997, the federal court ordered a judicial sale of the ANTHENOR EXPRESS.

Glovegold then sued TSC in the Circuit Court for Duval County, alleging breach of insurance obligations. TSC moved to dismiss the action for, among other things, lack of personal jurisdiction and improper venue. TSC filed one affidavit, that of Lars Rhodin, in support of its motion. As previously discussed, the affidavit of Lars Rhodin states that there was no connection between Florida and the policy of H & M insurance issued to appellant. The affidavit also set out TSC's view of its (limited) contacts with Florida:

> 8. The Swedish Club is neither incorporated in nor authorized to transact business in Florida; has no agents, employees, agency or offices in Florida; and does not in any manner transact, operate, conduct, engage in or carry on business or any business venture in Florida. Furthermore, The Swedish Club does not sell, consign or lease by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers or distributers, to any person, firm or corporation in Florida. Since 1991, three or four of our members have utilized the services of Coastal States Insurance Brokers,

> a broker in Panama City, Florida, to place insurance for various members in The Swedish Club. None of those members was a Florida based ship owning company or operator, but were located in Panama, Texas, Connecticut, Singapore, Liberia, Denmark, Norway, Isle of Man and The Bahamas. One member, based in The Bahamas with ships registered in Panama and The Bahamas, placed its insurance through another Florida based broker, Sedgwick Bergvall in Miami, since 1992 which was continued through 1996. In 1996, the time of the incident alleged, these were the only connections The Swedish Club had with Florida. Approximately twice each year a Goteborg-based underwriter for The Swedish Club visits the above brokers, but in 1996 and since that time there has been no procurement of insurance business covering owners, operators or vessels operating out of or located in Florida.

TSC also sought a protective order barring discovery until the trial court ruled on the motion to dismiss. The trial court granted the motion to dismiss, finding that TSC had not subjected itself to personal jurisdiction in Florida.

TSC further asserted that venue in the Florida courts would be improper due to the presence of a forum selection clause in the insurance contract. The insurance policy documents in the record state, "[t]his insurance is subject to Institute Time Clauses—Hulls 11 10183, current circulars, The Articles of Association and Swedish Law." TSC asserts that the applicable "Swedish Law" is the Swedish Maritime Code, which refers any dispute involving maritime insurance to the Swedish average adjuster, whom they characterize as a semi-judge, for the purpose of resolving marine insurance disputes. The trial court accepted this interpretation of the contract and ruled that venue would lie exclusively in Goteborg, Sweden, before the Swedish average adjuster.

II. PERSONAL JURISDICTION

A. LONG ARM STATUTE

As a prerequisite for jurisdiction over a foreign defendant, the plaintiff must identify a provision in the forum state's long-arm statute providing a basis for such jurisdiction. If the defendant's conduct brings it within the scope of the long-arm statute, the court must then perform a constitutional analysis to determine whether exercising jurisdiction over the defendant would offend the requirements of due process. *See International Shoe Co. v. State of Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); *see also Price v. Point Marine, Inc.*, 610 So.2d 1339, 1341 (Fla. 1st DCA 1992) (holding that in an analysis of personal jurisdiction, a court must apply the tests of constitutional due process after deciding that a defendant falls under the state's long-arm statute).

Florida's long-arm statute provides:

> (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:
>
> . . .
>
> (d) Contracting to insure any person, property, or risk located within this state at the time of contracting.

§ 48.193(1)(d), Fla. Stat. (1999). We must first determine, then, whether the facts of this case bring TSC under our long-arm statute. Glovegold asserts that the ANTHENOR EXPRESS was located in Florida at the time TSC issued the contract of H & M insurance.

Florida law prescribes a certain procedure when a motion to dismiss raises the issue of personal jurisdiction. *See Venetian Salami v. Parthenais*, 554 So.2d 499, 502 (Fla. 1989). First, the plaintiff pleads the basis for jurisdiction without the necessity of including all supporting facts. *See id.* A foreign defendant that wishes to contest jurisdiction must move to dismiss and, further, must attach to the motion affidavits in support of this position. *See id.* The burden then shifts to the plaintiff to prove by affidavit that jurisdiction is proper. See id. Where the affidavits can be harmonized. the trial court can make a decision based upon facts that are essentially undisputed. *See id.* at 502-03. If the affidavits are in direct conflict and cannot be reconciled, then the trial court must hold a limited evidentiary hearing to determine jurisdiction. *See id.* at 503.

In this case, the parties correctly followed this procedure. Glovegold filed its complaint, followed by TSC's motion to dismiss with the Rhodin affidavit. The Rhodin affidavit contains a conclusory statement that there was no connection to Florida in the issuing of the H & M insurance. Glovegold then submitted detailed affidavits to rebut the Rhodin statement. The trial court, however, expressed doubt that the vessel was in Florida when TSC entered the contract of insurance. The trial court stated:

> Plaintiff has filed an affidavit from one of the managing directors of Glovegold Shipping Ltd. in which he says that the vessel may well have been in Florida at the time the contract of insurance was entered into, although the affidavit describes a scheduled visit and not a specific time that the vessel was in Florida. The affidavit does not show where the vessel was at the time the risk actually commenced.

If the trial court was unsure, after reviewing the affidavits, it was obligated to undertake a limited evidentiary hearing on that issue. *See Venetian Salami*, 554 So.2d at 503. Based on

the judge's language, however, it appears that he actually misread or overlooked the affidavits introduced by Glovegold. The Zachariou affidavit states that the ANTHENOR EXPRESS was in Port Everglades on July 31, 1995, when the contract for insurance was initially executed. Furthermore, the Kostopoulos affidavit states that the ANTHENOR EXPRESS was in the port of Miami on December 31, 1995, when the insurance coverage was extended. TSC's general allegation of "no connection" does not sufficiently counter Glovegold's relatively specific demonstration of such a connection. We simply cannot know what factors Rhodin included in his evaluation, with regard to this particular insurance undertaking. The affidavits are not, therefore, in "direct conflict." Glovegold sufficiently demonstrated a statutory basis for jurisdiction, and the trial court erred by not finding as much.

Nevertheless, Florida's long-arm statute will apply in this case only if the cause of action arises from one of the contacts enumerated in section 48.193(1), Florida Statutes (1999), here, the contract to insure the ANTHENOR EXPRESS while she was located in a Florida port. Satisfaction of this arising from requirement necessitates a "'direct affiliation,' 'nexus,' or 'substantial connection' . . , between the basis for the cause of action and the [action that falls under the long-arm statute]." *Citicorp Ins. Brokers v. Charman*, 635 So.2d 79, 82 (Fla. 1st DCA 1994) (quoting *Damoth v. Reinitz*, 485 So.2d 881, 883 (Fla. 2d DCA 1986)). Glovegold's cause of action sets out TSC's denial of a claim under the insurance contract at issue. Therefore, a direct affiliation between TSC's Floridarelated act and Glovegold's cause of action exists. Consequently, Florida's long arm statute gives the Florida courts jurisdiction over TSC subject to any constitutional due process limitations.

B. DUE PROCESS

We must now determine whether exercise of personal jurisdiction offends the due process clause of the federal Fourteenth Amendment. *See International Shoe*, 326 U.S. at 316, 66 S.Ct. 154. The law recognizes two types of personal jurisdiction, specific and general jurisdiction. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n. 8 & 415 n. 9, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984). Specific jurisdiction exists "when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum." *Id.* at 414 n. 8, 104 S.Ct. 1868. General jurisdiction exists "[w]hen a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum. . . ." *Id.* at 415 n. 9, 104 S.Ct. 1868. This distinction is important in determining the applicable constitutional due process test.

To exercise specific personal jurisdiction over a defendant, a court must find that "the nonresident . . . defendant . . . has 'certain minimum contacts with [the forum] such that maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *Id.* at 414, 104 S.Ct. 1868 (quoting *International Shoe*, 326 U.S. at 316, 66 S.Ct. 154). The standard for an exercise of general personal jurisdiction is a much higher standard. The court must find that the defendant's contacts with the forum represent continuous and systematic general business contacts. *See id.* at 416, 66 S.Ct. 154. Here, Glovegold relies upon specific personal jurisdiction, because its claim arises out of TSC's contract to insure the ANTHENOR EXPRESS, which was located in Florida at the time of the contract's execution. We have already noted that TSC's issuance of the H & M policy satisfies Florida's long-arm statute in this case. Accordingly, due process will not require a finding of continuous and systematic general business contacts.

Nevertheless, a Florida court may exercise jurisdiction over TSC only if Glovegold can demonstrate that TSC has minimum contacts with Florida such that requiring TSC to defend a Florida suit would not offend traditional notions of fair play and substantial justice. *See International Shoe*, 326 U.S. at 316, 66 S.Ct. 154; *see also Venetian Salami*, 554 So.2d at 502 ("[E]ven though a nonresident may appear to fall within the wording of a long arm statute, a plaintiff may not constitutionally apply the statute to obtain jurisdiction in the absence of the requisite minimum contacts with the forum state."). A court will find constitutionally adequate minimum contacts where "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297,100 S.Ct. 559, 62 L.Ed.2d 490 (1980) (citing *Kulko v. California Superior Court*, 436 U.S. 84, 97-98, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978)). The United States Supreme Court has held that mere foreseeability is not the benchmark for personal jurisdiction. *See id.* at 295,100 S.Ct. 559. For instance, it is not enough to find a likelihood that a TSC insured vessel might find its way to Florida. *See id.* at 297, 100 S.Ct. 559. Instead, due process looks for a relationship between the defendant, defendant's conduct and the litigation in the forum. *See Helicopteros*, 466 U.S. at 414, 104 S.Ct. 1868 (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977)). The focus of this standard is fairness. *See Woodson*, 444 U.S. at 292,100 S.Ct. 559.

TSC argues that it holds no authorization to transact business in Florida and, in fact, transacts no business in Florida; maintains no offices or agents in Florida; and sells no insurance in Florida. This argument does not, however, determine the issue before us. We must examine all factors bearing upon the minimum contacts question. Accordingly, we note the following matters supported by the record: TSC

entered into an insurance contract for a vessel primarily trading in and out of Florida; the vessel was in Florida at the time of the contract; the vessel was in Florida at the time of extension of the contract; the vessel was involved in previous litigation in Florida; TSC has a network of correspondents in the state; TSC utilized Florida insurance brokers; a Goteborg-based underwriter for TSC consistently visited Florida brokers for at least five years, including the time period when TSC insured the ANTHENOR EXPRESS; and, the mechanical problem that disabled a ship that frequented Florida ports in fact occurred in Florida waters, requiring the assistance of a Florida towing company and shipyard. These are the factors we apply to our analysis.

In an instructive case, the federal Court of Appeals for the First Circuit looked at similar factors and upheld Puerto Rico's jurisdiction over the foreign insurer of a vessel that ran aground off the Puerto Rican coast and caused an oil spill. *See Commonwealth of Puerto Rico v. SS Zoe Colocotroni*, 628 F.2d 652 (1st Cir.1980). The insurer in *Colocotroni* argued that it had no offices in Puerto Rico, sold no insurance there, and transacted no business there. *See id.* at 667. The *Colocotroni* court did not use the "arising out of language developed by later cases. *See, e.g., Helicopteros*, 466 U.S. at 414,104 S.Ct. 1868 (defining specific personal jurisdiction as "jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum. . . ."). The court, however, relied upon Puerto Rico's long-arm statute, which provides for jurisdiction over a nonresident "if the action or claim arises as a result of carrying out business transactions within Puerto Rico. *Colocotroni* 628 F.2d at 668. The *Colocotroni* court's analysis assists our consideration of this case.

TSC urges us to find that *Colocotroni* has no persuasive force because it conflicts with *Woodson*. The *Colocotroni* court did not, however, rely solely upon the foreseeability

standard condemned by *Woodson*; rather, the court found minimum contacts between the defendant insurer and Puerto Rico sufficient to warrant personal jurisdiction over the insurer. First, the insurer regularly issued insurance to vessels that frequented Puerto Rico and operated within Puerto Rican waters. *See Colocotroni*, 628 F.2d at 668. Second, the insurer had a system of Puerto Rican correspondents available to aid the owners of any vessel that might need legal representation within Puerto Rico. *See id.* Third, even though the insurer did not make any effort to insure vessels in Puerto Rican waters, it advertised the names of their Puerto Rican correspondents, affirmatively encouraging commerce within Puerto Rican waters. *See id.* at 669. Finally, the *Colocotroni* court recognized that an insurer has some control over its insureds to influence the course taken by insured vessels. *See id.* at 670. For instance, the insurer can limit coverage to specific jurisdictions, and if it chooses not to do so, it can reasonably expect to be haled into court in many jurisdictions. *See id.*

In *Colocotroni*, the insurer's contacts with Puerto Rico satisfied both the long-arm statute and constitutional tests for specific jurisdiction. *See id.* The court reasoned that "by advertising the name of its local correspondent in San Juan, [the insurer] affirmatively encouraged such commerce [in Puerto Rico]." *Id.* at 669. The court then concluded that "where it not only does not act to curtail such presence [in Puerto Rico] but actively promotes it by providing contractual services in the jurisdiction, we hold that such an insurer is amenable to personal jurisdiction in the forum." *Id.* The same reasoning applies in the present case.

TSC is an international company, insuring risks around the world through a complex scheme of brokers and underwriters. TSC's own marketing materials, including those available on the world wide web, advertise a network of correspondents who can handle claims quickly. These materials specifically mention correspondents in three Florida

cities. These facts are similar to those upon which the *Colocotroni* court focused when determining that the defendant insurer was subject to personal jurisdiction.

TSC characterizes *Colocotroni* as in conflict with the United States Supreme Court's decision in *Woodson*, and further suggests that *Helicopteros* rendered *Colocotroni* moot. We are not so persuaded. *Colocotroni* was decided after *Woodson*, and as noted above, the *Colocotroni* court distinguished its holding from *Woodson*, by noting the regularity of contacts and control over the insured vessel's course. *See Colocotroni*, 628 F.2d at 668-70. In *Helicopteros*, the parties conceded that the claims "did not 'arise out of,' and were not related to, [the defendant's] activities within Texas." *Helicopteros*, 466 U.S. at 415, 104 S.Ct. 1868. *Helicopteros* thus focused upon whether the forum had general jurisdiction over the defendant. *See id. Helicopteros* does not delegitimize our analysis of specific personal jurisdiction.

TSC also invites us to construe two decisions of this court as supporting dismissal. *See Ocean Chem. Transp., Inc. v. Cotton*, 702 So.2d 1272 (Fla. 1st DCA 1997) (finding port stops at the direction of the ship's charterer, engaging husbanding agents, soliciting Florida employees, and maintenance of an escrow account to ship pollutants into the jurisdiction do not satisfy the requirements for specific personal jurisdiction); *American Overseas Marine Corp. v. Patterson*, 632 So.2d 1124 (Fla. 1st DCA 1994) (finding "sporadic and nonpurposeful utilization of certain Florida ports" insufficient to exercise general jurisdiction over nonresident shipowner). These cases are not factually analogous to the present case, and they do not control our analysis.

In Cotton, the court stated:

> Appellant's activities do not satisfy the "connexity" or "causal connection" requirement of specific personal jurisdiction because Appellee's suit does not arise out of or relate to Appellant's contacts with Florida.

702 So.2d at 1272-73. Although the court noted that the defendant's contacts with the forum did not meet the standard for specific jurisdiction, the quoted language suggests that the court analyzed general jurisdiction. Such must be the case because the suit did not arise out of or relate to the defendant's contacts with Florida. *See id.* The court couched the analysis in terms of specific jurisdiction only because the trial court had ruled that it had specific personal jurisdiction over appellants. *See id.* at 1272. The trial court could not have specific jurisdiction because the claim did not arise out of the defendant's contacts with Florida. This court also implicitly recognized that defendant's contacts with Florida were insufficient to overcome the much higher hurdle imposed by the due process standard for finding general jurisdiction.

Patterson similarly did not pass on a question of specific jurisdiction. The plaintiff there was a crew member injured while the vessel on which she worked was in the harbor of Saipan.*See Patterson*, 632 So.2d at 1125. The vessel had no contact with Florida for two and one-half years before the accident. *See id.* at 1127. We explained that Florida courts could not exercise specific jurisdiction because there was no causal connection between the defendant's activities in the state and plaintiffs cause of action. *See id.* Absent a causal connection, "a court in the forum state may exercise jurisdiction over a nonresident defendant only where general jurisdiction can be established." *Id.* (citing *Helicopteros*, 466 U.S. at 411-12, 104 S.Ct. 1868). The court then went on to

analyze whether the defendant's activities met the higher threshold of general jurisdiction. *See id.*

Neither Cotton nor *Patterson* dictate that the Florida courts cannot exercise specific jurisdiction over TSC in this case. Under Florida's long-arm statute, Glovegold's cause of action does arise out of TSC's contact with Florida, and Glovegold need only demonstrate the constitutionally adequate minimum contacts. We hold that TSC's purposeful connections to Florida satisfy the minimum contacts test.

III. VENUE

The trial court read the language in the H & M insurance policy as a forum selection clause. This was error. Florida procedural rules govern a determination of the validity of a forum selection clause. *See Fendi v. Condotti Shops, Inc.*, 754 So.2d 755, 758-59 (Fla. 3d DCA 2000) (citing *Manrique v. Fabbri*, 493 So.2d 437 (Fla.1986), which applied the law of the forum, instead of the law selected by the parties, in determining the validity of a forum selection clause). The clause in the contract between Glovegold and TSC provides: "This insurance is subject to Institute Time Clauses—Hulls 1/10/83, current circulars, The Articles of Association and Swedish Law." This language may be a choice of law provision, but as this question has not been litigated, we express no opinion in that regard. Even if this language constitutes a choice of law provision, however, it does not mandate a specific venue. *See Intercapital Funding Corp. v. Gisclair*, 683 So.2d 530, 532 (Fla. 4th DCA 1996) (holding that a provision that states "This Purchase and Sale Agreement has been made and is performable in West Palm Beach, Palm Beach County, Florida, and shall be governed by the Laws of the State of Florida" was not a forum selection provision because it was titled "Governing Law" and did not contain the word "forum" or "venue"); *see also Management Computer Controls, Inc. v. Charles Perry Constr., Inc.*, 743

So.2d 627, 631(Fla. 1st DCA 1999) (stating that for a forum selection clause to be mandatory, it must use mandatory language such as "any litigation must be initiated in a specified forum"). Accordingly, we hold that the contract for H & M insurance does not contain a valid forum selection clause, and venue in Jacksonville is proper.

Based on the foregoing, we REVERSE the order dismissing appellant's claim for lack of jurisdiction and venue, and REMAND for further proceedings.

WOLF and LAWRENCE, JJ., concur.

APPENDIX B

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151

[Filed August 14, 2001]

Case No.: 1D99-1961
L.T. No.: 98-04487-CA

GLOVEGOLD SHIPPING, LIMITED,
Appellant/Petitioners,

v.

SVERIGES ANGFARTYGS ASSURANS, ETC.
Appellee/Respondents.

BY ORDER OF THE COURT:

Appellee's motion filed January 16, 2001, for rehearing, rehearing *en banc* and certification is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served: Courtney Wilder Stanton, Thomas C. Smith, Timothy J. Conner and George D. Gabel, Jr.

jm

/s/ Jon S. Wheeler [SEAL]
JOHN S. WHEELER
Clerk

APPENDIX C

SUPREME COURT OF FLORDIA
Friday, March 22, 2002

CASE NO.: SCO1-2012
Lower Tribunal No.: 1 D99-1961

SVERIGES ANGFARTYGS ASSURANS FORENING, ETC.,
Petitioner(s),

vs.

GLOVEGOLD SHIPPING, LIMITED,
Respondent(s).

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d).

SHAW, HARDING, ANSTEAD, PARIENTE and LEWIS, JJ., concur.

A True Copy
Test:

[SEAL]

/s/ Thomas D. Hall
THOMAS D. HALL
Clerk, Supreme Court

bh
Served:

HON. JON S. WHEELER, CLERK
SCOTT D. MAKAR
GEORGE D. GABEL, JR.
STEPHEN H. GRIMES
TIMOTHY J. CONNER
COURTNEY WILDER STANTON
HON. L. PAGE HADDOCK, JUDGE
JOHN STRATAKIS
HON. JIM FULLER, CLERK

APPENDIX D

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

[Filed April 29, 1999]

Case No.: 98-04487-CA
Division: CV-D

GLOVEGOLD SHIPPING LIMITED,
Plaintiff,

v.

SVERIGES ANGFARTYGS ASSURANS
FORENING dlbla THE SWEDISH CLUB,
Defendant.

ORDER GRANTING DEFENDANT'S MOTION
TO DISMISS AND TO QUASH SERVICE

This cause came before the Court for hearing on the motion of defendant, SVERIGES ANGFARTYGS ASSURANS FORENING d/b/a The Swedish Club ("The Swedish Club"), to dismiss this action and to quash service of process, *inter alia*, supported by the affidavit of Mr. Lars Rhodin, The Swedish Club's Director of Claims & Legal Support Department. The Swedish Club requests that this action be dismissed for lack of venue, and lack of personal jurisdiction. Plaintiff, Glovegold Shipping Ltd., ("Glovegold"), opposes the motion and has filed numerous affidavits in support of its opposition. After having heard the arguments of counsel, and considering the affidavits and other filings of the parties, the Court determines that The Swedish Club's motion should be granted.

This case involves a dispute over coverage under a contract of marine insurance between two foreign companies. Glovegold, plaintiff, is a Maltese company which owned and operated the M/V ANTHENOR EXPRESS (the "ANTHENOR EXPRESS" or "vessel"), and with a principal place of business in Piraeus, the Hellenic Republic. The Swedish Club is an association organized under the laws of Sweden for the purpose of conducting insurance for its members, and having its principal place of business in Goteborg, Sweden. It provided policies of insurance to Glovegold for Hull & Machinery ("H&M"), Protection & Indemnity ("P&I"), and Freight Demurrage and Defense ("FD&D"), with respect to the ANTHENOR EXPRESS.

The Swedish Club issued those policies in Goteborg, Sweden. Glovegold was owned by a London holding company, Glovegold Ltd., the ANTHENOR EXPRESS was one of many vessels managed by Denholm Ship Management (UK) Ltd. based in Glasgow, Scotland, and the insurance was placed by the management company through brokers in London. Thus, with respect to both the placement and issuance of the insurance in this case, there was no connection with the state of Florida or the United States.

It has been established that The Swedish Club is neither incorporated in nor authorized to transact business in Florida; has no agents, employees, agency or offices in Florida; and does not in any manner, transact, operate, conduct, engage in or carry on business or any business venture in Florida. The Swedish Club does not sell, consign, or lease by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers, or distributors, to any person, firm or corporation in Florida. The Swedish Club's contacts with this state since 1991 at least have been extremely limited.

The Swedish Club has raised the issue of lack of personal jurisdiction over it. There are two kinds of personal

jurisdiction that a court may properly exercise over a nonresident defendant: General jurisdiction and specific jurisdiction. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984). Specific jurisdiction exists when a state exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum. For general jurisdiction to exist, the defendant must be found to have maintained continuous and systematic general business contacts with the forum, so that it can properly be considered to be "present" in the forum. *American Overseas Marine Corp. v. Patterson* 632 So.2d 1124 (Fla. 1st DCA 1994. Glovegold has not pled which statute it relies on for personal jurisdiction, but it appears from paragraphs 4, 5, 6, and 12 of the amended complaint it is relying on either §626.906, part of Florida's Unauthorized Insurers Process Law ("UIPL"), or § 48.193(1)(d). The Court finds that neither of these provisions, nor any other portion of the "long-arm" statute, provide a basis for personal jurisdiction here.

The Court finds that The Swedish Club lacks the requisite minimum contacts to justify the exercise of personal jurisdiction over it as well. Furthermore, the Court finds that The Swedish Club is not engaged in "substantial and not isolated" business activity so that there is no basis for the exercise of general jurisdiction in this case.

In addition, § 626.906 cannot provide a basis for jurisdiction since it only applies to policies issued for delivery to Florida residents, which was not the case here. Also, § 626.906 requires a finding of minimum contacts, which the Court finds are lacking in this case.

In Florida, to establish specific jurisdiction, a plaintiff must show that a defendant has committed one or more of the acts enumerated in § 48.193(1), Florida Statutes, and, in addition thereto, has sufficient "minimum contacts" with Florida in order for a court to exercise personal jurisdiction. *Price v. Point Marine, Inc.*, 610 So.2d 1339 (Fla., 1st DCA 1992).

The act which plaintiff has alleged here is described in § 48.193(1)(d), as "contracting to insure any person, property, or risk located within this state at the time of contracting." Plaintiff has filed an affidavit from one of the managing directors of Glovegold Shipping Ltd. in which he says that the vessel may well have been in Florida at the time the contract of insurance was entered into, although the affidavit describes a scheduled visit and not a specific time that the vessel was in Florida. The affidavit does not show where the vessel was at the time the risk actually commenced.

Even if § 48.193 were applicable, plaintiff must also show minimum contacts with the state of Florida. The First District Court of Appeal has made itself quite clear in shipping matters the type of contacts which are not sufficient for jurisdiction, and it is those contacts which I find here. For example, in the case of *Ocean Chemical Transport Inc. v. Cotton*, 1998 A.M.C. 38, 702 So.2d 1272 (Fla. 1st DCA 1997), the acts of the defendant shipping company consisted of the defendant's recruitment of 47 employees, including plaintiff, 22 of whom were listed as Florida residents, the calling of defendant's vessels in Florida ports 21 times between 1991 and 1996, and defendant's hiring of Florida-based shipping companies as husbanding agents who arranged for supplies, paid dockage fees, assisted with arranging crew and recruitment changes, and facilitated payroll delivery to the ship. The defendant had engaged the services of at least four husbanding agents in the state of Florida, who also had authority to sign bills of lading. The defendant shipping company also maintained an escrow account with the state of Florida in order to be able to ship pollutants in the jurisdiction. The District Court of Appeal held that those acts were insufficient to establish specific personal jurisdiction.

In this case the only facts to establish specific jurisdiction as set forth by the plaintiff are that The Swedish Club has

correspondents in several of the ports of Florida and sent surveyors to examine the damage after the vessel was brought into the port o f Jacksonville following the casualty. Plaintiff has propounded some discovery to which the defendant has objected seeking information concerning the activities of those correspondents in the state of Florida. Defendant has objected on the grounds that the information is irrelevant. The Court agrees. If the employment of husbanding agents every time a ship comes to Florida is not sufficient to establish specific or general jurisdiction then certainly the use of law firms to handle any legal matters which may occasionally arise is insufficient.

Plaintiff has made inquiry in its discovery about letters of undertaking which may have been issued by The Swedish Club when a casualty may have arisen in Florida or elsewhere in the United States to stand in place of the vessel on behalf of the owner. Defendant has also objected to that inquiry as irrelevant, based upon the case of *Hassneh Insurance Co. of Israel, Ltd. v. Plastigone Technologies Inc.*, 623 So.2d 1223 (Fla., 3rd DCA 1993). Contacts by the insurer must be the result of deliberate and purposeful action, not something over which the insurer had no control, and the providing of an indemnity agreement by an Israeli insurance company in Florida was not sufficient to establish minimum contacts. *See. Bookman v. KAH Incorporated, Inc.*, 614 So.2d 1180, 1182 (Fla. 1st DCA 1993).

The Court has examined the other discovery requested of plaintiff by defendant on the issue of jurisdiction and finds that it is irrelevant as well. The First District Court of Appeal has made it clear that where a vessel is brought to Florida by a charterer or through other circumstances not within the control of the defendant, there are no minimum contacts to satisfy specific or general jurisdiction. *See, American Overseas Marine Corp. v. Patterson.*

The Swedish Club also raises lack of venue because of the incorporation of Swedish Law into the insurance contract. The provisions of the insurance at issue specifically provide that Swedish law governs. This is made clear on page 1 of the H&N1 policy as follows:

> This insurance is subject to Institute Time Clauses - Hulls 1-10-83, current circulars, the Articles of Association and Swedish law.

The Swedish Maritime Code, the Swedish law which is applicable here, requires the venue of any dispute involving maritime insurance be placed with the Swedish Average Adjuster located in Sweden. Chapter 17 of the Swedish Maritime Code provides in relevant part:

> Section 2 . . . In Sweden, adjustments are made by an Average Adjuster. The Average Adjuster shall be appointed by the Government. He shall be learned in law . . . .
>
> Section 9 Disputes in the liability of an insurer on account of marine insurance shall be referred to investigation and decision by adjustment (Particular Average Statement). Unless otherwise agreed, the investigation shall be conducted at the place where the insurance contract was made or where such adjustment is usually conducted in that area . . . .

Even if there were jurisdiction over the defendant, this Court would decline to exercise that jurisdiction. These provisions of the Swedish Maritime Code are an integral part of the insurance contract between the parties since they have been incorporated by reference to Swedish law. There is only one Average Adjuster, and that person is based in Goteborg, Sweden, acting as a semi judge in marine insurance disputes, among other things. The use of an Average Adjuster for the purposes of resolving disputes is a very old institution in Sweden and Norway. Any order of the Adjuster is binding

unless it is appealed to the District Court as provided in Chapter 21, Section 6 of the Swedish Maritime Code. The use of the word "shall" indicates that the clause is mandatory, not permissive.

It is well settled that parties to a contract have the right to chose the forum or venue in which disputes arising out a contract will be resolved. *M/S Bremen v. Zapata Off Shore Co.*, 407 U.S. 1, 92 S.Ct.1907, 32 L.Ed.2d 513 (1972); *Carnival Cruise Lines, Inc. v. Shiite*, 499 U.S. 585,111 S.Ct.1522,113 L.Ed.2d 622 (1991); *Manrigue v. Fabbri*, 493 So.2d 437 (Fla. 1986).

This court finds that the choice of venue provision in the Swedish Maritime Code, and as incorporated into the H&M policy, is binding on the parties and mandates that venue for the resolution of this dispute is in Sweden. The current dispute, i.e., whether there is insurance coverage for a casualty is well within the parameters of the venue provision. Moreover, the Court finds that Sweden as a choice of forum is reasonable. It is where The Swedish Club is located and where the insurance was issued. It is not a remote alien forum. Furthermore, it is clear that the dispute involved here is not an inherently local one. There is no evidence that the incorporation of the venue provision was intended to discourage the pursuit of legitimate claims, or the inclusion was accomplished by fraud or overreaching.

The Court finds that there is no personal jurisdiction of The Swedish Club in this case, and in any event the action would be dismissed for lack of proper venue. The Court need not reach the other grounds for dismissal raised by The Swedish Club given these findings.

Therefore, it is now

ORDERED AND ADJUDGED:

1. The motion to dismiss of The Swedish Club for lack of personal jurisdiction over it is GRANTED, and service of process herein is QUASHED.

2. The motion to dismiss of The Swedish Club for lack of venue in this case is GRANTED.

3. Accordingly, this action is hereby DISMISSED for the reasons stated.

DONE AND ORDERED IN CHAMBERS, in Jacksonville, Duval County, Florida, this___day of ~~March~~, 1999.

ORDER ENTERED

APR 27 1999

L. P. HADDOCK
CIRCUIT COURT JUDGE

c: George D. Gabel, Jr., Esq.
Courtney W. Stanton, Esq.

APPENDIX E

IN THE CIRCUIT COURT,
FOURTH JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

Case No: 98-04487-CA
Division: CV-D

GLOVEGOLD SHIPPING LIMITED,
Plaintiff,

v.

SVERIGES ÅNGFARTYGS ASSURANS FORENING
D/b/a THE SWEDISH CLUB,
Defendant.

AFFIDAVIT OF LARS RHODIN

City of Goteborg
Country of Sweden

Before me the undersigned authority this day personally appeared Mr Lars Rhodin, who affirms, deposes and says:

1. I have been employed by Sveriges Ångfartygs Assurans Forening d/b/a The Swedish Club ("The Swedish Club"), since 1986. I hold a master's degree in law from the University of Lund. At the time of the events described in the complaint fled in this case I was the Director of the Hull Claims Department for The Swedish Club. In 1997 I became the Director of Claims & Legal Support Department, which includes the Hull, P&I and FD&D Departments. I have had ultimate responsibility for the handling of the claim in this case from the outset. I have personal knowledge of the matters set forth in this affidavit either through direct experience in my employment with The Swedish Club, or

through a review of records kept in the course of The Swedish Club's regularly conducted business activity. I make this affidavit in support of The Swedish Club's motion to dismiss, to quash service of process, and to stay pending resolution in Sweden, filed in the above-styled action.

2. The Swedish Club is an association organized under the laws of Sweden for the purpose of conducting insurance for its members, and having its principal place of business in Goteborg, Sweden.

3. The Swedish Club insures entered members' vessels. Those vessels may operate through the world, but the insurance policies are always issued in Sweden. Attached hereto are true and correct copies of the hull and machinery policy issued to plaintiff, with two addendums, as follows:

Hull and machinery policy 19950731-19951231
Hull and machinery addendum 19950731-19961231
Hull and machinery addendum 19960101-19960326

Exhibit "A". The first addendum reflects a request from the manager that the insurance should cover the period July 31, 1995 through December 31, 1996, rather than July 31, 1995 through December 31, 1995. The second addendum was issued as a result of the formal cancellation of cover due to non-payment of premiums, and was issued as an administrative measure to reflect the insurance period. Separately, however, the vessel lost its class at the beginning of February 1996 and cover was therefore automatically suspended or terminated.

4. Attached hereto are the Protection and Indemnity, and Freight Demurrage and Defence policy 19950731-19960220, as Exhibit "B". Also attached is a true and correct copy of the FD&D Rules of the Association which are applicable to the FD&D policy as Exhibit "C".

5. The above-referenced policies were issued in Göteborg, Sweden. In fact, all policies of The Swedish Club are issued in Göteborg.

6. The assured in this case, Glovegold Shipping Limited, is a Maltese company with the sole asset reportedly being the MN ANTHENOR EXPRESS. The Swedish Club was advised that Glove-old Shipping Limited was owned by a London holding company, Glovehold Ltd., with operations controlled from Piraeus, Greece, or London, England. I have been informed by the principals of Glovegold Shipping L':imited that there is an ongoing dispute as to the control over Glovehold Shipping Limited among two or three of the directors, the current status of which I am unaware. The ship was one of many vessels managed by Denholm Ship Management (UK) Ltd. based in Glasgow. Scotland. Insurance was placed by the management company through brokers, Lowndes Lambert Marine Ltd., in London. The underwriters, The Swedish Club, are located in Sweden. There was no connection with the State of Florida or the United States of America in the placing or issuing of the insurance.

7. In the course of my handling of this claim I have received a copy of an Order of the English High Court of Justice, Queen's Bench Division, attached hereto as Exhibit "D", which indicates that a receiver has been appointed by the Court for Glovegold Shipping Limited, the Plaintiff herein.

8. The Swedish Club is neither incorporated in nor authorized to transact business in Florida; has no agents, employees, agency or offices in Florida; and does not in any manner transact, operate, conduct, engage in or carry on business or any business venture in Florida. Furthermore, The Swedish Club does not sell, consign or lease by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers or distributors, to any person, film or corporation in Florida. Since 1991, three or four of our members have utilized the services of Coastal States

Insurance Brokers, a broker in Panama City, Florida, to place insurance for various members in The Swedish Club. None of those members was a Florida based ship owning company or operator, but were located in Panama, Texas, Connecticut, Singapore, Liberia, Denmark, Norway, Isle of Man and The Bahamas. One member, based in The Bahamas with ships registered in Panama and The Bahamas, placed its insurance through another Florida, based broker, Sedgwick Bergvall in Miami, since 1992 which was continued through 1996. In 1996, the time of the incident alleged, these were the only connections The Swedish Club had with Florida. Approximately twice each year a Göteborg-based underwriter for The Swedish Club visits the above brokers, but in 1996 and since that time there has been no procurement of insurance business covering owners, operators or vessels operating out of or located in Florida.

9. Scandinavian Marine Claims Office is not an agent of The Swedish Club for purposes of receiving service of process or conducting business on behalf of The Swedish Club, or otherwise. They are a claims service facility appointed on a case by case basis, and are not involved in solicitation of business on behalf of The Swedish Club.

10. The hull insurance policy provides that it is governed by Swedish law. The relevant provisions of The Swedish Maritime Code are attached hereto as Exhibit "E". Chapter 17. Sections 2 and 9, provide for the Swedish Average Adjuster to be the proper venue for dispute resolution. There is only *one* Average Adjuster. He is appointed by the government and shall be learned in law. The current nominee is based in Göteborg, acting in this capacity as a semi-judge in inter alia marine insurance disputes. The use of an average adjuster for purposes of resolving disputes is a very old institution in Sweden and Norway. An order of the adjuster is binding unless it is appealed to the District Court, in this case

Göteborg, pursuant to Chapter 21, Section 6 of the Maritime Code. It is that system of dispute resolution which is incorporated into the policy in this case.

/s/ Lars Rhodin
LARS RHODIN

City of Göteborg
Country of Sweden.

The foregoing instrument was acknowledged before me this 29th day of January 1999, by Lars Rhodin, has produced his Driver's Licence No.: 590302-5277, valid until 21st day of February 2007 as identification.

/s/ Björn Magnusson
BJÖRN MAGNUSSON
Notary Public of Gothenburg, Sweden

[SEAL]

My Commission expires: 2006-04-30

Exp. No.: 78862
Fee: SEK 180:-